*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**+ WRIT PETITION NO. 19145 OF 2004**

**% Date: .01.2006**

**Between:**

**# Subash Neemkar and 5 others ….. Petitioners**

**And**

**$ The Regional Joint Commissioner**

**Of Endowments, Hyderabad and 4 others …. Respondents**

**! Counsel for the petitioners : Sri M.Vidyasagar**

**^ Counsel for respondents 1 to 3 : G.P. for Endowments**

**Counsel for respondent No.4 : Sri E.Ayyapu Reddy**

**Counsel for 5th respondent : Sri K.Ravi, Standing**

**Counsel**

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**> Head Note**

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1993(1) An.W.R. 139

[2](1998)8 SCC 1

3AIR 1969 SC 556

41990(1) APLJ 109

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION NO. 19145 OF 2004**

**ORDER:**

Heard Sri M. Vidyasagar, learned Counsel for the petitioners, Learned Government Pleader for Endowments appearing on behalf of respondents 1 to 3, Sri E. Ayyapu Reddy, Learned Counsel appearing on behalf of Sri V. Ravi Kiran Reddy, learned Counsel for the 4th respondent and Sri K. Ravi, learned

Standing Counsel appearing on behalf of the 5th respondent and at their request the writ petition was taken up for final hearing.

The present writ petition is filed questioning the proceedings of the 1st respondent in R.P.No.1024 of 2004 dated 5.10.2004, upholding the order of the 2nd respondent in I.A.No.79/04 in O.A.No.21/04, dated 18.08.2004, as illegal, arbitrary and without jurisdiction and for a direction to quash both the orders.

Facts, to the extent necessary for this writ petition, are that petitioners 1 to 6 claim to be the founder trustees of the subject institution – a Hanuman Temple constructed in the year 1984. The said institution, said to have several other temples, was classified under Section 6(c) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, (Act 30 of 1987), an order which the petitioners contend to have been erroneously passed without putting them on notice. The petitioners filed W.P.No.3071/04 which was disposed of, by order dated 01.04.2004, leaving it open for them to raise a dispute, under Section 87 of Act 30 of 1987, before the Deputy Commissioner for Endowments, (2nd respondent herein). The petitioners filed O.A.No.21/04, before the 2nd respondent, seeking a declaration that the subject institution did not attract the provisions of Act 30 of 1987 and did not partake the character of a public religious institution. It is the petitioners' case that in view of the dispute raised by them, no steps were taken to register the institution and that the dispute raised by them is still pending before the 2nd respondent-Deputy Commissioner awaiting the remarks of the Assistant Commissioner of Endowments.

While matters stood thus, the 4th respondent – association filed two interlocutory applications, in O.A. 21 of 2004, before the Deputy Commissioner, the first one requesting that they be impleaded as necessary and proper parties in O.A.21/04 and the second to appoint an officer of the department to manage the affairs of the temple pending the O.A. Copies of both the interlocutory applications, filed on 18.8.2004, were served on the counsel for the petitioners only on 18.08.2004, and on the same day at 2.30 P.M. the 2nd respondent-Deputy Commissioner allowed the interlocutory application in I.A.79/04 in O.A.21/04 and in exercise of the powers conferred under Section 87(2) of Act

30 of 1987, appointed the 5th respondent Executive Officer of Sri Hanuman Temple, Vijayanagar Colony, Hyderabad as the Custodian of the Hanuman Temple, Near Allwyn Factory, Sanathnagar, Hyderabad with immediate effect pending disposal of O.A.21/04. The custodian was directed to take over complete charge of the records, accounts and properties of the temple from the petitioners herein and to ensure that the day to day affairs of the temple were administered properly without giving scope for complaints from any quarter. The petitioners were directed to hand over forthwith charge of the records, amounts and properties of the temple, to the custodian.

Against the order passed by the Deputy Commissioner, in I.A.79/04 in O.A.21/04 dated 18.08.2004, the petitioners preferred a revision, under Section 92, to the Regional Joint Commissioner of Endowments who, at the admission stage, granted status quo as on 23.8.2004. The revision petition was subsequently heard and dismissed, by order dated 5.10.2004, on the ground that the 5th respondent had assumed charge of office on 23.8.2004 prior to the status quo order being issued and it was therefore not necessary to continue the order of status quo.

A Counter affidavit is filed, on behalf of respondents 1 to 3, by the Assistant Commissioner of Endowments, Secunderabad wherein it is stated that the subject temple was published under Section 6(c)(ii) of Act 30/87 and is a public religious institution permitting access to the general public and devotees. The petitioners' contention that they were the founder trustees is denied and it is contended that no such recognition was obtained from the competent authority of the department and that the self-styled committee, registered under the Societies Registration Act, had no legal sanctity. Reference is made to Section 87(2) to contend that the Deputy Commissioner is empowered to pass orders, as he deems fit, for effective administration of the property and custody of the money belonging to the institution and that the 5th respondent was appointed as a custodian to safeguard the properties and income of the temple. It is stated that, as stipulated under Section 1(3)(b) of Act 30/87, the Act applies to all Hindu Public Religious institutions, whether registered or not.

On behalf of the 4th respondent – association, a detailed counter affidavit is filed, wherein it is stated that against the order passed by the Joint

Commissioner under Section 92, the petitioners have an effective alternative remedy under Section 93 of the Act by way of filing a revision before the government and since it has been filed, without exhausting the alternative remedy under Section 93, the writ petition itself is not maintainable and is liable to be dismissed. The 4th respondent would deny the petitioners' contention that they were founder trustees of the subject institution and their having take up construction of the temple.

It is stated that an extent of land admeasuring Ac.6.10 guntans, in Sy.No.129/1 and 130/Part, situated at Sanathnagar, originally belonged to the Allauddin family, who had leased out the said land for 99 years to M/s Allwyn Metal Works Ltd, that with the permission of the management of Hyderabad Allwyn Company Ltd and the owners, the employees of Hyderabad Allwyn Ltd had taken up construction of the temple and its sub-temples in the said land, that the temple was constructed collecting donations from employees, several local people and that the 4th respondent association is deeply involved in the development of the temple and has contributed for its development. It is further stated that every one in Sanathnagar locality, including employees of Hyderabad Allwyn Ltd had contributed to the said temple, that the petitioners were non-locals and had illegally entered into management and had installed permanent hundies before the sanctum sanctorum of the temple and issued tickets for exclusive poojas. It is stated that the public have access to the temple as of right and that the temple has all the characteristics of a public temple. Serious allegations are levelled against the petitioners, including that they were illegally collecting the hundi amounts and pooja tickets and were not placing accounts before the public or the persons responsible for construction and development of the temple. It is stated that the 4th respondent had filed a implead petition and a petition to appoint a neutral person from the department to look after the day to day management and administration of the temple and that the 2nd respondent, after enquiry and after satisfying himself, had passed the order, under Section 87(2), appointing the 5th respondent as custodian and the 5th respondent had assumed charge on 23.8.2004 by sealing the hundies after duly conducting a panchnama in the presence of the staff and devotees of the temple.

Before examining the rival contentions, it is necessary to refer to the statutory provisions applicable to the case on hand. Section 6 and 87 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, (Act 30 of 1987), read as under:

**6. Preparation and publication of list of charitable and religious institutions and endowments on the basis of income:-**

The Commissioner shall prepare separately and publish in the prescribed manner, a list of-

(a)(i).the charitable institutions and endowments; or

ii) the religious institutions and endowments other than maths;

whose annual income as calculated for the purpose of levy of contribution under Section 65 exceeds rupees five lakhs;

(b)(i) the charitable institutions and endowments,

(ii) the religious institutions and endowments, other than maths;

whose annual income calculated as aforesaid exceeds rupees; fifty thousand but does not exceed rupees; five lakhs;

(c)(i) the charitable institutions and endowments; or

(ii) the religious institutions and endowments other than maths not falling under Clause (a) or Clause (b);

(d) the maths irrespective of the income;

(e) the Dharmadayam irrespective of the income:

Provided that the Commissioner may alter the classification assigned to an institution or endowment in the list and enter the same in the appropriate list in case the annual income of such institution or endowment calculated as aforesaid exceeds or falls below the limits specified in Clause (a) or Clause (b) or Clause (c) for three consecutive years.

**87. Power to Deputy Commissioner to decide certain disputes and matters:-**

(1) The Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question,--

a). whether an institution or endowment is a charitable institution or endowment;

b). whether an institution or endowment is a religious institution or endowment;

c) whether any property is an endowment, if so whether it is a charitable endowment or a religious endowment;

d) whether any property is a specific endowment;

e) whether any person is entitled by custom or otherwise to any honour, emoluments or

perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;

f) whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or

g) where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of a religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.

h). whether a person is founder or a member from the family of the founder of an Institution or Endowment.

2). The Deputy Commissioner may, pending his decision under sub-section (1), pass such order as he deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

3). Every decision or order of the Deputy Commissioner on confirmation by the Commissioner under this section shall be published in the prescribed manner.

4). The Deputy Commissioner may while recording his decision under sub-section (1) and pending implementation of such decision, pass such interim order as he may deem fit for safeguarding the interests of the institution or endowment and for preventing damage to or loss or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

5). Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner.

6). The presumption in respect of matters covered by Clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment, as the case may be.

Since only public charitable or religious institutions are published under Sections 6 of the Act, there is a presumption under Section 87(6) that the subject institution or endowment is public and the burden of proof, in all such cases, lies on the person claiming the institution or endowment to be private. While Section 87(1)(b) empowers the Deputy Commissioner to enquire into and decide any dispute, as to the question whether the institution or endowment is a religious institution or endowment, till such a decision is taken and publication of the institution, under Section 6, is set aside, in view of Section 87(6) there is a statutory presumption that the subject institution is a public religious institution. The disputes enumerated in clauses (a) to (h) of Section 87(1) are

required to be **decided** (emphasis supplied) by the Deputy Commissioner and Section 87(2) of the Act empowers the Deputy Commissioner to pass interlocutory orders pending the final decision under sub-section (1). Such interlocutory orders under Section 87(2) must relate to the administration of the property or custody of the money belonging to the institution or endowment. Sub-section (3) contains adequate safeguards and, in order to come into force, requires both the final decision under Section 87(1) and an interlocutory order under Section 87(2) to be confirmed by the Commissioner and to be published in the prescribed manner. Thus it is only on the order of the 2nd respondent-Deputy Commissioner being confirmed by the Commissioner, and on its publication in the manner prescribed, would the order come into force. Admittedly the impugned order of the 2nd respondent-Deputy Commissioner dated 18.8.2004 has neither been confirmed by the Commissioner nor has it been published. As such the said impugned order cannot be said to have come into force empowering appointment of an executive officer to take custody of the property of the subject institution or of its administration.

Learned Government Pleader for Endowments, Sri K. Ravi the learned Standing Counsel and Sri E. Ayyapu Reddy, learned Counsel appearing on behalf of Sri V. Ravi Kiran Reddy, learned Counsel for the 4th respondent would place strong reliance on sub-sections (4) and (5) of Section 87 to contend that even if sub-section (2) is held inapplicable, the exercise of power of the 2nd respondent-Deputy Commissioner, in passing the impugned order, can be traced to sub-section (4) of Section 87. I am unable to agree. Sub-section (4) deals with a situation subsequent to a final decision being taken by the Deputy Commissioner under sub-section (1). It provides for action to be taken during the period subsequent to the decision having been taken and pending implementation of such decision. Sub-Section (4) enables the 2nd respondent-Deputy Commissioner to pass an order to safeguard the interest of the institution pending implementation of his final decision under Section 87(1), i.e., the period after he has taken a final decision under Section 87(1) till such decision comes into force, under Section 87(3), after it is confirmed by the Commissioner and is published in the prescribed manner. With a view to safeguard the interest of the institution or endowment, to prevent damage

thereto and to ensure against loss or misappropriation in respect of the properties or monies belonging to the institution, the 2nd respondent-Deputy Commissioner, while recording the final decision under sub-section 87(1), is empowered to pass such orders as he may deem necessary in this regard pending implementation i.e., pending confirmation of the decision by the Commissioner and its publication in the prescribed manner. While the interlocutory order, which the 2nd respondent-Deputy Commissioner is entitled to pass under Section 87(2), is prior to a final decision being taken and during the pendency of proceedings under Section 87(1), the power conferred under Section 87(4) is to pass orders after a final decision is taken under Section 87(1), till the said decision comes into force under Section 87(3). Admittedly the 2nd respondent-Deputy Commissioner has not taken any final decision under sub-section (1) of Section 87 of the Act and as such sub-section (4) has no application.

As stated above the 4th respondent filed two I.As, in O.A.No. 21 of 2004 filed by the petitioner under Section 87(1), one to implead itself and the second for an interim order to take custody of the property of the subject institution from the petitioners. Curiously, without even ordering the I.A. to implead the 4th respondent, the 2nd respondent-Deputy Commissioner has chosen to pass orders in the other interlocutory application filed by the 4th respondent. The order was passed on the very same day on which the I.A. was instituted, thus denying the petitioners an opportunity of filing their counter affidavit thereto and to rebut the allegations made therein. The impugned order is therefore in violation of principles of natural justice and is accordingly quashed.

Sri E. Ayyapu Reddy, learned Counsel appearing on behalf of the 4th respondent, would however contend that, since the petitioner has an effective alternative remedy under Section 93 of the Act and inasmuch as the said remedy has not been exhausted, the petitioners are disentitled from approaching this Court under Article 226 of the Constitution of India.

It is well settled that existence of an alternative remedy is not a bar for invoking the jurisdiction of this Court under Article 226 of the Constitution of India. This Court, normally, refrains from entertaining petitions under Article

226 of the Constitution of India, where there is an effective alternative remedy in existence. The self imposed restrictions, normally, not to entertain writ petitions, without exhausting the alternative remedies, cannot be construed as prohibiting this court from entertaining such petitions, even in exceptional cases.

Exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and the self imposed restrictions not to exercise discretion, where there is an effective alternative remedy in existence, cannot be construed as a prohibition. The rule that before invoking the extraordinary jurisdiction of the High Court, the alternative remedy should be exhausted, is a rule of convenience and discretion and not a rule of law. (**Bhadrachalam Paper Boards Ltd., Vs. Union of India**). In **Whirl Pool Corporation Vs. Registrar of Trade Marks, Mimbai and others** the Supreme Court held thus:

"The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged……."

Thus in cases involving violation of principles of natural justice, exhaustion of the alternative remedy is not a bar for invoking the jurisdiction of this Court under Article 226 of the Constitution of India. (**Babu Ram Vs. Zilla Parishad**; **P.R. Venkatiah Vs. A.P. Co-operative Agricultural Development Bank Ltd**).

In the present case it is not in dispute that the petitioner did not have the opportunity of filing its reply to the I.A. filed by the 4th respondent, since the application filed by the 4th respondent was entertained and orders were passed thereon on 18.08.2004, the very same day on which it was instituted. As the impugned order dated 18.08.2004, is in violation of principles of natural justice, I see no reason to non-suit the petitioners or to relegate them to the alternate remedy under Section 93 of the Act.

Once an order is held to be in violation of principles of natural justice, it is required to be set aside leaving it open to the respondents to take action in accordance with law. Since the original application filed by the petitioner was in 2004, no useful purpose will be served in now directing the 2nd respondent-Deputy Commissioner to decide the interlocutory applications filed by the 4th respondent. In order to give a quietus and finality to the entire episode, the 2nd respondent-Deputy Commissioner is hereby directed to hear and finally decide O.A.No. 21 of 2004 filed by the petitioner, and pass necessary orders thereon, within a period of three months from the date of receipt of a copy of this order.

While Sri M. Vidyasagar, learned Counsel for the petitioners, would contend that once the impugned order is set aside, the petitioners are entitled to take control of the entire property and manage the affairs of the institution, Sri E. Ayyapu Reddy, learned Counsel appearing on behalf of the 4th respondent, while levelling serious allegations against the petitioners, would submit that the custodian appointed by the department must be permitted to continue to function till final orders are passed in the O.A. by the Deputy Commissioner. Since the 2nd respondent-Deputy Commissioner is now being directed to hear and decide O.A.No. 21 of 2004 filed by the petitioners, it is wholly unnecessary for this Court to examine the allegations leveled by 4th respondent against the petitioners. The 2nd respondent-Deputy Commissioner, while adjudicated the original application filed by the petitioners, shall decide the matter on its own merits without being influenced by observations, if any, made in this order.

The fact, however, remains that this Court exercises its jurisdiction under Article 226 of the Constitution of India only in furtherance of larger public

interest. While it is true, as contended by Sri M. Vidyasagar, learned counsel for the petitioner, that consequent upon the impugned order being set aside, the petitioners are entitled to administer the institution and take custody of its monies and properties, i.e., restoration of the situation prevailing prior to the impugned order dated 18.08.2004, I am of the view that the interest of the institution and larger public interest would be adequately safeguarded, if, while permitting the petitioner to administer the institution, pending final decision by the 2nd respondent-Deputy Commissioner under Section 87 (1), the Commissioner of Endowments is directed to appoint a Senior Officer in whose presence alone will the hundies of the subject institution be opened by the present custodian and the petitioners, monies of the institution, including through sale of tickets, prasadam etc., shall be accounted for to such a senior officer, under whose supervision these moneys shall be deposited in a separate bank account and only with whose written authorization would the petitioners be permitted to withdraw money from the bank account, that too only for immediate essential expenditure. While the petitioners shall be in overall management of the subject institution the custodian, who assumed charge on 23.08.2004, shall assist the petitioners in the overall management of the subject institution. Needless to state that, pending final decision by the 2nd respondent-Deputy Commissioner under Section 87(1), and the said decision coming into force, the aforesaid orders shall continue, and the petitioners, shall also not, till then, alienate or change the nature of the land and other property of the subject institution.

Subject to the aforesaid, the writ petition is allowed, and the impugned orders are quashed. However, in the circumstances, without costs.

Date: 01.2006.

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RAMESH RANGANATHAN, J

**Note**: L.R. Copy to be marked.

B/o

MRKR/ASP